

/ IN THE SUPREME COURT OF MISSOURI

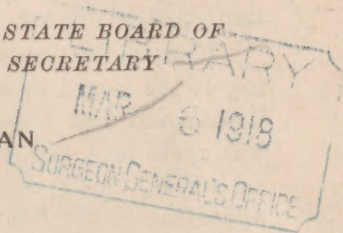
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RETURN FILED IN BEHALF OF THE STATE BOARD OF  
HEALTH OF MISSOURI BY THE SECRETARY

DR. GEORGE HOMAN

IN THE CASE OF

HATHAWAY v. THE BOARD, ON JUNE 24 1890.



To the Honorable Supreme Court of the State of Missouri:

The following statement is respectfully submitted to your honorable body in reply to the notification issued June 17, 1890, commanding the State Board of Health to show cause why a certificate has not been issued to James N. Hathaway, who made application to the Board for license to pursue the practice of medicine, who was refused such license, and now by writ of **mandamus** seeks to force issuance of such license or certificate.

The Board most respectfully submits the following, to-wit:

1. The genuineness of the diploma presented by said Hathaway, nor the good standing of the school granting it—namely, the Dartmouth Medical College of Hanover, in the state of New Hampshire—was never questioned by the Board and has never at any time been an issue in the case.
2. The certificate sought by Hathaway was unanimously refused by the Board, on July 11, 1889, after a hearing at

which he was present, on charges duly preferred, alleging unprofessional or dishonorable conduct on his part, consisting in the habitual publication by him of advertisements in the public press of St. Joseph, Missouri, during the year 1889—said advertisements being in the opinion of the Board of a character that directly tended and were designed to mislead and deceive the public, to wrongfully impose on the fears, weakness or ignorance of the sick or credulous, and to defraud the people by false and impossible claims in regard to the treatment of disease.

The application was renewed by Hathaway at the meeting of the Board in January, 1890, he being again present in person and also represented by counsel, and the application was again fully heard and considered, and a certificate refused as before, under Section 6878, Revised Statutes of 1889—it appearing to the Board that he persisted in the conduct held professionally dishonorable and prejudicial to the public; and, moreover, was engaged in continuous and willful violation and defiance of the law, as shown by his arrest, prosecution and conviction in April of this year in this State for illegal practice.

3. In the several hearings had by Hathaway, and in the conclusions reached by the Board in regard thereto, the Board had advice of the Attorney-General's office concerning the proper construction and application of the section authorizing the refusal of certificates to individuals guilty of unprofessional or dishonorable conduct, and as to the bearing of decisions of the higher courts relating to such enactments, and on the duty and rightful powers of the Board in cases where unprofessional or dishonorable conduct is charged against a physician.

4. In their further endeavors to faithfully and impartially discharge their sworn duty under the law, and strictly within the limits of law so far as they were enabled to determine them, the members of the Board were guided by the light afforded by the decision of your honorable court in the Granville case, as found in 83 Mo., paragraphs 3 and 4; by decisions rendered in 1885 by the Supreme Court of Minnesota



in cases involving the question of unprofessional or dishonorable conduct under a law similar to our own, especially those of Edward D. Chapman and E. C. Feller against the State Board of Medical Examiners; by decisions of the Supreme Courts of Illinois and Iowa rendered in 1889, affirming the constitutionality of medical laws similar to ours, and the competency of State Boards to refuse or revoke certificates for cause duly shown; by the decision of the Supreme Court of the United States, in *Dent vs. West Virginia*, and by the decision of the Court of Appeals in England, in *Allbutt vs. The General Council of Medical Education*, rendered also last year.

5. At no time has the Board attempted or assumed to forbid to physicians the right to advertise their profession and business in the public press, but when such advertisements were made with evident purpose to solicit and procure, wrongfully and fraudulently, patients to submit to medical treatment by them, it has been deemed that such matters were within the proper cognizance and lawful powers of the Board, and action has been taken accordingly in the interest of the public, and that some means of such public protection is necessary is evident from the known fact that the sick and suffering—those weakened in body and mind by disease, or imagined disease—are of all people most liable to imposition and deception, to be deceived by false promises and victimized by cunning and designing practitioners, the most unscrupulous of this class being not unfrequently those who are well qualified, educationally, to practice medicine.

All of which is respectfully submitted by the Board.

GEO. HOMAN M D  
Secretary

